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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,564	01/05/2004	Toshihiko Hashiguchi	17337	3678
23389 7590 10/01/2008 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
10/01/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/751,564

Applicant(s)

HASHIGUCHI, TOSHIHIKO

Examiner

Vy Q. Bui

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 5/8/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Holthaus et al-5,954,746 (Holthaus).

Holthaus (Fig. 1-11, for example) discloses ultrasonic probe/blade 20, ultrasonic transducer/oscillator 16/14, movable jaw 24, movable handle 26 arranged on the same side as the movable jaw 24 with respect to the central longitudinal axis of the main body 28, a cord connecting the ultrasonic transducer/oscillator 16/14 to a drive circuit (not shown), main body assembly 28 and 22, pin 90 as 1st pivot shaft for jaw 24 to freely pivot about, 2nd pivot shaft 76 for handle 26 to freely pivot about substantially as recited in the claims.

Please, notice that it is reasonable to consider manipulating section main body as assembly of handle 28 and sheath 22 because there is no structural limitation in the claim to exclude this interpretation, especially in view of the present invention, where main body 4 (Fig. 3, present invention) extending distally toward jaw 50/54 a length comparable to the length of sheath 22. Consequently, it is reasonable to consider that pin 90 is at the peripheral surface of manipulating section main body as recited in the claims. Further, pivot shaft 76 meets the requirement of the claim language because handle 26 freely pivot about shaft 76 as claimed.

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Alternatively, it would have been obvious to one of ordinary skill in the art to extend handle 28 distally and move pin 90 proximally to a location at handle 28 as this configuration is another design choice.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holthaus et al-5,954,746 (Holthaus).

As to claims 3 and 14, Holthaus does not explicitly disclose a drive circuit as recited in the claims. However, the drive unit as recited in the claims is well known in the art. For example, Honda-6,066,135 discloses a drive unit 1 (Fig. 1) having switch/setting portion 24, timer 35 (Fig. 9) to control the ultrasonic output and time of operation as recited in the claims. It would be obvious to one of ordinary skill in the art to provide Holthaus device with a drive unit circuit as recited in the claims in view of Honda-'135, as this circuit is well known and suitable for controlling an ultrasonic output and time of operation of the device such as a Holthaus's device.

Response to Arguments

Applicant's arguments filed 7/2/2008 have been fully considered but they are not persuasive. The Applicant argued as below:

1. Argument: "Referring to Holthaus, column 4, lines 9-13 and FIG. 3, clamping jaw 24 is affixed to elongated tube 22 by jaw pivot pin 90 that is positioned in pivot pin guide hole 92. Applicant notes that jaw pivot pin 90 and pivot pin guide hole 92 is provided on elongated tube 22 and not on accessory housing 28. Therefore, jaw pivot pin 90 and pivot pin guide hole 92, as cited by the Examiner, does not teach or suggest a first pivot shaft at the peripheral surface of the manipulating section main body, as provided in claim 1.".

Examiner's position: Please, see above rejection.

2. Argument: "In other words, second camming pin 76 rotates and slides within second camming slot 56 and is not fixed with respect to accessory housing 28. In contrast, claim 1 as amended recites a moveable handle linked with the moveable jaw for opening/closure operation of the moveable jaw with respect to the ultrasonic probe and supported to freely pivot about a second pivot shaft at the peripheral surface of the manipulating section main body. Therefore, second cam 34 (including second camming channel 56 and second camming pin 76) does not teach or suggest the second pivot shaft as provided in claim 1 of the present application.".

Examiner's position: there is no language in the claims to require that pin 76 is fixed to accessory housing 28. Further, handle 26 does freely pivot about pin 76 as recited in the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/
Primary Examiner, Art Unit 3773